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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,581	02/26/2004	Konstantin Othmer	15814.16	3412
22913 7590 08/28/2008 WORKMAN NYDEGGER 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111				
EXAMINER				
SING, SIMON P				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
08/28/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/789,581

**Applicant(s)**

OTHMER, KONSTANTIN

**Examiner**

SIMON SING

**Art Unit**

2614

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28, 29 and 49-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 28, 29 and 52 is/are allowed.
- 6) ☒ Claim(s) 49-51 and 53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Qua et al. US 6,222,909 in view of Chaturvedi et al. US 7,043,266.

1.1 Regarding claims 49 and 51, Qua discloses a mobile station (MS) 110 in figure 1, and teaches:

receiving first voice data from a far end party as part of a first network-based connect call (column 4, line 60 to column 5, line 3; column 8, lines 1-3);  
playing the first voice data via the earpiece or speaker of the MS 110;  
storing, in a buffer of the MS 110 configured to send and receive network-based connect calls, the first voice data (column 3, lines 22-28; column 4, lines 11-25, 60-67; column 5, lines 1-10, 28-31; column 7, lines 50-55; column 8, lines 1-3); and

in response to user input, replaying the first data (column 7, lines 10-14).

Qua teaches pressing START/STOP buttons to record voice data of a normal cellular call, and it is obvious that a user of MS 110 is able to record a first

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voice data from a first far-end party by pressing the START/STOP buttons and then to record a second voice data from a second far-end party by using the same buttons in a conference call, or in different calls without recording a silent gap between the first and second voice data. Qua fails to teach that the MS 110 comprises a push-to-talk (PTT) mode for recording voice data in a network-based instant connect (push-to-talk, or PTT) call.

However, Chaturvedi discloses a system for network-based instant connect calls in figure 1. Chaturvedi teaches that mobile stations 12 and 14 comprise a normal mode and a push to talk mode (instant connect mode) (column 5, lines 24-27; column 6, lines 28-63; column 8, lines 4-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the QUA reference with the teaching of Chaturvedi so that the MS 110 would have comprised a PTT mode, and voice data in a PTT call would have been recorded as in a normal cellular mode. The motivation for such a modification was to use only one device in different communications modes.

1.2 Regarding claim 50, stated above, the modified Qua reference teaches storing the first and the second voice data without a silence gap.

1.3 Regarding claim 53, Qua discloses a mobile station (MS) 110 in figure 1, and teaches:

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receiving first voice data from a far end party as part of a first network-based connect call (column 4, line 60 to column 5, line 3; column 8, lines 1-3); playing the first voice data via the earpiece or speaker of the MS 110; storing, in a buffer of the MS 110 configured to send and receive network-based connect calls, the first voice data (column 3, lines 22-26; column 4, lines 11-25, 60-67; column 5, lines 1-10, 28-31; column 7, lines 50-55; column 8, lines 1-3); and

in response to user input, replaying the first data (column 7, lines 10-14).

Qua teaches pressing START/STOP buttons to record voice data of a normal cellular call, but fails to teach that the MS 110 comprises a push-to-talk (PTT) mode for recording voice data in a network-based instant connect (push-to-talk, or PTT) call.

However, Chaturvedi discloses a system for network-based instant connect calls in figure 1. Chaturvedi teaches that mobile stations 12 and 14 comprise a normal mode and a push to talk mode (instant connect mode) (column 5, lines 24-27; column 6, lines 28-63; column 8, lines 4-12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the QUA reference with the teaching of Chaturvedi so that the MS 110 would have comprised a PTT mode, and voice data in a PTT call would have been recorded as in a normal cellular mode. The motivation for such a modification was to use only one device in different communications modes.

***Allowable Subject Matter***

2. Claims 28, 29 and 52 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

For claims 28 and 29, the applicant's arguments, see the Remark, filed on 5/27/2008 are persuasive that the prior art of record fails to teach all limitations of independent claim 28.

For claim 52, Harris et al. teaches buffering voice packets in a buffer of a user device with PTT capability, and missing voice packets are re-transmitted to the device and inserted in proper positions in the buffer. Voice data in the buffer are then played to the user (see column 1, line 31 to column 2, line 11). Harris fails to teach playing voice data as received.

***Conclusion***

3. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Simon Sing whose telephone number is 571-272-7545. The examiner can normally be reached on Monday - Friday from 8:30 AM to 5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang, can be reached at 571-272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

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/Simon Sing/

Examiner, Art Unit 2614

08/25/2008